Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58

To: The Commission

REQUEST FOR EXPEDITED WAIVER OF SKYBEAM, LLC

SKYBEAM, LLC

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TABLE OF CONTENTS

Summary

Skybeam, LLC ("Skybeam") respectfully requests waiver so that it can reduce the value of its Rural Broadband Experiment ("RBE") letters of credit to one year of support. Taking such action will mitigate the financial impact on Skybeam, which will spend 88 percent of its 2020 RBE support on fees to its financial institution, leaving less than 12 percent – $141,434 – for broadband deployment to rural communities. Such action would be consistent with rules the Commission recently adopted for the Rural Digital Opportunity Fund ("RDOF") for support recipients like Skybeam that have deployed broadband service to at least 20 percent of eligible locations within the first two years of the support term. Because Skybeam obtains new letters of credit every two months in ever-increasing amounts, Skybeam asks for grant within the next 10 business days if at all possible.

Skybeam was authorized to receive $16.9 million in support, the largest of any RBE recipient. For each of its 10 Study Area Codes, Skybeam elected to receive 30 percent of the total amount of support upfront in exchange for making service available to 25 percent of eligible locations within 15 months of the first disbursement of support. Skybeam satisfied the 15-month deployment benchmark and has continued to build out and is nearing completion of its deployment obligations.

RBE program requirements require Skybeam to maintain letter of credits valued at the total amount of support that has already been disbursed plus the amount of support that is going to be provided in the next disbursement, with modest reductions based on compliance with buildout milestones. Based on current data, for calendar year 2020, the total value of Skybeam's letters of credit is $11,286,445. Skybeam will be receiving $1,186,001 in RBE support for 2020. The bank fees that Skybeam is paying in 2020 in exchange for the letters of credit is $1,044,567.

This means that of the total amount of support Skybeam will be receiving in 2020, only $141,434 of $1,186,001 – less than 12 percent – will be used to connect rural Americans to its broadband service.

Earlier this year, the Commission heeded the call of stakeholders and substantially modified its letter of credit rules for Phase I of RDOF. Under the new rules, the value of letters of credit can be reduced to the equivalent of one year of support for the entirety of the remaining buildout period if the recipient meets an optional buildout target of 20 percent of the supported locations before the end of Year Two. In taking this action, the Commission explicitly recognized the "disproportionate financial burden on support recipients" that would "result in less funding going directly to broadband deployment."

By certifying buildout to 25 percent of eligible locations in the first 15 months following support authorization, Skybeam has already surpassed the lower 20 percent threshold the Commission adopted in the *RDOF Order* as a basis for reducing letters of credit to just one year of support. Skybeam presents virtually no risk of default that would require a draw on its letters of credit.

Consistent with Section 1.3 of the Commission's rules, there is good cause for grant of the requested waiver. In light of the particular facts and special circumstances, waiver would make strict compliance with the burdensome RBE letter of credit requirements inconsistent with the public interest by making more support available for deployment and would support, not undermine, the Commission's policy objectives.

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REQUEST FOR EXPEDITED WAIVER OF SKYBEAM, LLC

Skybeam, LLC ("Skybeam"), pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. §1.3, hereby respectfully seeks waiver of the Rural Broadband Experiment ("RBE") program obligation that requires Skybeam to maintain an irrevocable letter of credit "that is valued at the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next disbursement."[1] Skybeam asks that it be permitted to reduce the value of its letters of credit to one year of support, consistent with rules the Commission recently adopted for the Rural Digital Opportunity Fund ("RDOF") for support recipients like Skybeam that have deployed broadband service to at least 20 percent of eligible locations within the first two years of the support term.[2] Skybeam is asking only that it be

[1] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8791 (2014) ("*Rural Broadband Experiments Order*").

[2] *Rural Digital Opportunity Fund*, Report and Order, WC Docket Nos. 19-126 and 10-90, FCC 20-5 (rel. Feb. 7, 2020) ("*RDOF Order*"). *See* 47 C.F.R. § 54.804(c). Section 54.804(c) establishes that the letter of credit for the first year of support will be equal to at least one year of support; for the second year of support, the letter of credit will be equal to at least 18 months of support; for year three, the letter of credit will be equal to at least two years of support. Of most relevance here, the value of the letter of credit can be reduced if the RDOF recipient deploys service to at least 20 percent of locations in the first two years, and the value of the letter of credit will be increased if the RDOF recipient misses buildout milestones. In no case will the value of the letter of credit exceed three years.

treated fairly – no better or worse than RDOF program participants – rather than being penalized for being an early adopter of the program.

As demonstrated below, Skybeam successfully met the requirement that it provide service to at least 25 percent of eligible locations in the first 15 months of its support term, yet is today carrying letters of credit covering five years of support, at significant cost. By granting the requested waiver, the Commission can ensure that the majority of its RBE support is used for the provision of voice and broadband service to unserved rural Americans rather than to pay fees on letters of credit to financial institutions.

Skybeam requests that the requested waiver be granted within the next 10 business days if at all possible, as every two months new letters of credit are issued at increasing amounts. As demonstrated below, the RBE letter of credit requirements create significant and increasing financial burdens on Skybeam and severely curtail its ability to use RBE support for its intended purpose of rural broadband deployment. Having met its accelerated buildout milestone and nearing completion of all of its RBE projects, there is virtually no risk of default that would trigger a draw on the letters of credit. Timely grant of a waiver will enable Skybeam to immediately reduce the substantial diversion of RBE support to letter of credit financing fees and repurpose those funds for investment into its RBE program to provide enhanced service during this time of national emergency when access to connectivity is so critical. Indeed, with the Federal Reserve taking dramatic action twice in the past two weeks to lower interest rates to near zero and provide U.S. companies with greater liquidity, the relief requested here would be well-aligned with current national monetary policy and have no material impact on the security of the government's taxpayer dollars. Further, the requested relief would remove the penalty currently imposed on Skybeam for its early adoption of the program. With the requested relief, Skybeam will be able to use a greater portion of the funds it receives to bring much-needed broadband service to customers, establishing a much better balance among benefits to consumers and financial risks to both Skybeam and the Commission.

Background

Skybeam is a wholly owned subsidiary of JAB Wireless, Inc. ("JAB"), the largest privately held fixed wireless Internet service provider ("WISP") in the United States. Operating under the Rise Broadband name, JAB provides voice and broadband service throughout rural and suburban sections of sixteen states, extending from the upper Midwest south to the Rio Grande River and across the Rocky Mountain states all the way to the California border. JAB uses a combination of licensed, lightly licensed and unlicensed bands to provide cost-effective voice and broadband service.[3]

Through its Skybeam subsidiary, JAB applied for RBE support, and was authorized to receive a total of $16.9 million, the most of any recipient, to help fund 10 projects in five states that it serves – Illinois, Iowa, Kansas, Nebraska and Texas.[4] In each supported area, Skybeam is required to deploy a network capable of delivering 100/25 Mbps and to offer at least one service plan that provides 25/5 Mbps to all eligible locations in the Study Area Codes ("SACs") where it is authorized to receive support. RBE support was authorized as follows:

[3] Rise Broadband is a signatory to the "Keep Americans Connected" pledge.

[4] *See Public Notice,* "Rural Broadband Experiment Support Authorized for Ten Winning Bids for Skybeam, LLC, Consolidated Communications Networks, Inc., Delta Communications LLC, and Allamakee-Clayton Electric Cooperative, Inc., WC Docket Nos. 10-90 and 14-259, DA 15-897 (rel. Aug. 7, 2015); *Public Notice,* "Rural Broadband Experiment Support Authorized for Winning Bids Submitted by Skybeam, LLC, Daktel Communications, LLC, Federated Telephone Cooperative, and Paul Bunyan Rural Telephone Cooperative, WC Docket Nos. 10-90 and 14-259, DA 15-1306 (rel. Nov. 12, 2015); *Public Notice*, "Rural Broadband Experiment Support Authorized for Winning Bid Submitted by Skybeam, LLC," WC Docket Nos. 10-90 and 14-259, DA 16-30 (rel. Jan.12, 2016).

Market	SAC	Number of Eligible Locations	Support Amount	Authorization Date
Coal City, IL	346116	1,291	$1,076,282	August 7, 2015
Manville, IL	346117	1,988	$1,504,014	August 7, 2015
Marion, KS	416118	914	$880,216	August 7, 2015
Burton, TX	446119	2,454	$1,066,849	August 7, 2015
Bassett, IA	356134	1,926	$3,550,244	November 12, 2015
Parkersburg, IA	356135	1,528	$2,183,630	November 12, 2015
Columbus, NE	376137	2,761	$2,396,730	November 12, 2015
St. Libory, NE	376138	1,188	$1,342,723	November 12, 2015
Corsicana, TX	446139	1,907	$2,372,403	November 12, 2015
Sioux City, IA	356136	794	$569,796	January 12, 2016
TOTAL		**16,751**	**$16,942,887**	

Consistent with the *Rural Broadband Experiments Order*, for each SAC Skybeam elected to receive 30 percent of the total amount of support upfront in exchange for meeting the accelerated deployment obligation of making service available to 25 percent of the eligible locations within 15 months of the first disbursement of support.[5] Subsequent to the initial payment, the remaining amount of support is disbursed in equal monthly installments.

Skybeam satisfied the 15-month deployment benchmark. Skybeam has continued to build out and is nearing completion of deployment to all eligible locations in each SAC.

As required as a condition to receiving support, Skybeam obtained letters of credit for each SAC in the required amount for the first year of support, including the additional 30 percent upfront amount.[6] Thereafter, Skybeam has continued to obtain letters of credit in ever-increasing value given the requirement that the letter of credit "*is valued at the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next disbursement*."[7] In other words, the second year of support required letters of credit equal to two

[5] *See Rural Broadband Experiments Order* at 8794.

[6] *See id.* at 8790.

[7] *Id.* at 8791 (emphasis added).

years of support; the third year of support required letters of credit equal to three years of support; and so on through the fifth year of support.

In 2016, the Commission made two changes to its RBE letter of credit requirements.[8] First, the Commission determined that RBE recipients must maintain their letters of credit until the final build-out milestone is verified.[9] Second, the Commission "modestly reduce[d] the value of the letter of credit" such that "[o]nce recipients have met the 85 percent build-out milestone, we will also permit those recipients to obtain a new or renew their existing letters of credit so they are valued at 80 percent of the total support disbursed plus the next year of support until the 100 percent build-out milestone has been met and verified."[10] The Commission reasoned that "the benefit to recipients of potentially decreasing the cost of the letter of credit as it becomes less likely that a recipient will default outweighs the potential risk that if a recipient does default and is unable to cure, we will be unable to recover a modest amount of support."[11]

At present, Skybeam's 10 letters of credit are covering the 30 percent upfront amount and the *pro rata* amount for the succeeding four years. Based on current data, for calendar year 2020, the total value of Skybeam's letters of credit is $11,286,445. Skybeam will be receiving $1,186,001 in RBE support for 2020. The bank fees that Skybeam is paying in 2020 in exchange for the letters of credit is $1,044,567. This means that of the total amount of support Skybeam will be receiving in 2020, only $141,434 of $1,186,001 – less than 12 percent – will be used to

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[8] *See Connect America Fund*, Order, 31 FCC Rcd 2384, 2388 (2016) ("it is not necessary to continue to require rural broadband experiment recipients to maintain a letter of credit after the build-out period to provide an adequate incentive for rural broadband experiment recipients to offer service that meets the Commission's requirements").

[9] *See id.* at 2387.

[10] *Id.* at 2388.

[11] *Id.*

connect rural Americans to its broadband service. The remaining 88 percent is going straight to the bank.

Discussion

I. WAIVER WOULD BE CONSISTENT WITH COMMISSION RULES AND THE PUBLIC INTEREST

The Commission has clear authority under Section 1.3 to grant immediate relief based on the record established in the RDOF proceeding. That rule permits the Commission to grant a rule waiver "for good cause shown, in whole or in part, at any time," including on its own motion without a formal request.[12] A waiver may be granted if the grant "would not undermine the policy objective of the rule in question and would otherwise serve the public interest," or in circumstances "where particular facts would make strict compliance inconsistent with the public interest."[13]

The Commission has already made such a finding by adopting a revised letter of credit requirements in the RDOF proceeding, including allowing recipients to reduce their letters of credit to one year of support when they have deployed to 20 percent of eligible locations within two years. Skybeam met this milestone in each SAC, and then some, within 15 months of receiving its first RBE funds. The Commission expressly recognized in the *RDOF Order* "that the letter of credit rules, as originally proposed [i.e., the same rules that were imposed in and

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[12] 47 C.F.R. §1.3. For example, for the RBE and CAF programs, the Commission has, on its own motion, waived the requirements in Sections 54.202(a)(1)(ii) and 54.313 for recipients to file five-year plans. *See, e.g., Connect America Fund,* 29 FCC Rcd 8769, 8795, ¶77 (2014); *Connect America Fund,* 28 FCC Rcd 2051, 2054, ¶8 (WCB 2013).

[13] *Northeast Cellular Telephone Co., L.P. v. FCC,* 897 F. 2d 1164, 1166 (D.C. Cir. 1990), *citing WAIT Radio v. FCC,* 418 F.2d 1153, 1159 (D.C. Cir. 1969). *See also Connect America Fund*, Order, WC Docket No. 10-90, *et al.*, DA 20-217 (rel. Mar. 3, 2020), at 5&6, ¶¶8&11 (granting waiver to allow carriers to merge study areas in light of "special circumstances [that] warrant a deviation from the general rule and such deviation will serve the public interest").

continue to apply to RBE recipients like Skybeam], *would impose a disproportionate financial burden on support recipients and result in less funding going directly to broadband deployment*."[14] It is thus clear that the Commission believes that the updated requirements will not only cause no harm to its policy objective of "ensuring that universal service funding is protected," but that the revised approach strikes a better, more appropriate balance between this objective and "the interest of potential support recipients in minimizing their financial cost over the course of the deployment term," thereby serving the public interest.[15] Given Skybeam's track record of deployment and compliance with the 15-month accelerated deployment milestone, similar treatment here is more than justified.

The facts also support a finding of "special circumstances" – the RBE program was the first opportunity for broadband providers to compete for high-cost support, and neither the Commission nor recipients had any historical data or experience to inform the Commission's predictive judgment on the impact of the ever-increasing amounts of letters of credit. The subsequent experiences of high-cost recipients provided valuable insight for the Commission's decision in the *RDOF Order* to reduce substantially the burdens inherent in obtaining and maintaining letters of credit. Those same, real-world circumstances should lead to the same finding of "disproportionate financial burden[s]"[16] for Skybeam consistent with the Commission's recent conclusions and the public interest.

In the Notice of Proposed Rulemaking that initiated the RDOF proceeding, the Commission originally proposed to adopt "the same letter of credit rules we adopted for the CAF

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[14] *RDOF Order* at 46, ¶105 (emphasis added).

[15] *Id.* at 47, ¶105.

[16] *Id.* at 46, ¶105.

Phase II auction."[17] This proposal was consistent with the Commission's repeated references in the *RDOF NPRM* to the CAF Phase II auction as the appropriate model for the next round of federal universal service support.[18] The CAF Phase II rules were, in turn, based on RBE program requirements that make the letter of credit value cumulative over the funding term, with modest reductions as buildout milestones are met. At the same time, the Commission noted that the CAF Phase II auction "provides a basis for lessons learned that can inform the letter of credit requirements" for the RDOF.[19] In particular, it observed "that winning bidders complained of the high cost of obtaining and maintaining a letter of credit, such that it would 'consume too much of the limited capital available to … [and] leave [in]sufficient funds for … [CAF Phase II auction] construction.'"[20] Accordingly, it specifically sought comment on alternative approaches, including whether it "should decline to require a letter of credit" for the RDOF auction altogether.[21]

In response to this request for input concerning the efficacy and the drawbacks of the existing letter of credit requirement, the Commission received significant comment from a broad range of parties, including large and small carriers serving rural areas, CAF II recipients, major trade associations, and lending institutions.[22] Across this range of commenters, the concerns cited in the *RDOF NPRM* were repeated and amplified by numerous stakeholders. Responding

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[17] *Rural Digital Opportunity Fund*, Notice of Proposed Rulemaking, 34 FCC Rcd 6778, 6805, ¶84 (2019) ("*RDOF NPRM*").

[18] *See, e.g., id.* at 6770, ¶3; 6783, ¶15; 6784, ¶¶19 & 20; 6785, ¶23; 6787, ¶28; 6789, ¶32; 6796, ¶50; 6797, ¶56; 6802, ¶¶74 & 75; 6805-06, ¶84-88; and 6807, ¶¶90-92.

[19] *Id.* at 6806, ¶89.

[20] *Id.* at 6806-07, ¶89.

[21] *Id.* at 6807.

[22] JAB is an active member of the Wireless Internet Service Providers Association ("WISPA"), which advocated for relaxed letter of credit obligations for RDOF recipients.

to stakeholder concerns and recommendations, the Commission revised the originally proposed RDOF letter of credit rules in several important respects. The Commission had noted in the *RDOF NPRM* that the effect of its proposed rule would require that, for each year of the buildout term, recipients of support "modify, renew, or obtain a new letter of credit to ensure that it is valued at a minimum of the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year."[23] Thus, the credit demands were to increase progressively until substantial long-term milestones were met, just like the RBE requirements. Instead of this approach, however, the Commission adopted a modified requirement that support recipients must maintain a letter of credit with a minimum value equal to only one year of support until USAC has verified that the recipient has deployed to all supported locations.[24] The new rule provides greater financial flexibility by slowing the required yearly increases in the value of the letter of credit, adding only half the value of support scheduled for disbursement in Years Two and Three, and capping the total amount required at a maximum of three years of support.

As an extra incentive for expedited buildout, the modified rules allow the value of the letter of credit to be reduced to the equivalent of one year of support for the entirety of the remaining buildout period if the recipient meets an optional buildout target of 20 percent of the supported locations before the end of Year Two.[25] The recipient must report the locations served to the HUBB portal and ask USAC to complete the verification process. If USAC verifies that the recipient has deployed service to 20 percent of the locations, then the recipient can reduce its

[23] *RDOF NPRM* at 6805, ¶85.

[24] *See RDOF Order*, Appendix A, Final Rules, §54.804(c)(1).

[25] *See id.* at §54.804(c)(1)(v).

letter of credit value to one year for the remainder of the buildout term provided it continues to meet all remaining mandatory buildout milestones.[26]

In revising the letter of credit rules, the Commission explicitly recognized "that the letter of credit rules, as originally proposed [*i.e.*, the same obligations imposed on Skybeam], would impose a disproportionate financial burden on support recipients and result in less funding going directly to broadband deployment."[27]

II. THE SAME JUSTIFICATIONS UNDERLYING THE UPDATED RDOF LETTER OF CREDIT RULE WARRANT WAIVER

As described in the foregoing section, based on detailed concerns raised by a variety of commenters, the Commission determined in the RDOF proceeding that the letter of credit requirements adopted and used for RBE and CAF II recipients should not apply to RDOF Phase I support recipients, but instead should be revised to reduce the significant financial burdens imposed on support recipients. It did so based in large part on the ill effects of the existing letter of credit requirements on winning bidders as described in the record.

Given the identity of purpose of the RBE, CAF and RDOF programs and acknowledged similarities between the three programs, the same rationales underpinning the changes made for the upcoming RDOF award process apply *a fortiori* to Skybeam. By certifying deployment to 25 percent of eligible locations in the first 15 months following support authorization, Skybeam has already surpassed the lower 20 percent threshold the Commission adopted in the *RDOF Order* as a basis for reducing letters of credit to just one year of support.

Five years into the program, Skybeam will have paid \$3,419,070 of RBE support to obtain and maintain letters of credit. In 2020, 88 percent of the RBE support to be distributed in

[26] *See RDOF Order* at 45, ¶99.

[27] *Id.* at 46, ¶105.

2020 is being used for the sole purpose of covering Skybeam's accumulated bank fees, leaving only $141,434 in annual support for broadband deployment to rural and underserved communities. At this point, Skybeam cannot be viewed as a default risk. There can be no question that Skybeam's ability to use a higher percentage of RBE support for deployment would be a better use of finite RBE support, and therefore more consistent with the public interest.

The cumulative nature of RBE letters of credit has inhibited Skybeam from maximizing its network investments because the funds used to pay letter of credit fees could be used to invest in RBE deployment. And because letters of credit are treated essentially as debt, the letters of credit have therefore penalized the company in terms of other debt covenant provisions. This problem is exacerbated as the value of the letters of credit increases over time, even as Skybeam has continued to build out and the risk of default that would trigger a draw on the letters of credit declines significantly.

The Commission has taken corrective actions for RDOF Phase I with the specific objective of promoting broadband deployment through reduction of disparate costs imposed upon service providers.[28] It should take such action here to ensure that Skybeam does not continue to bear the disproportionate burden of onerous and increasing letter of credit fees that have diverted funds away from deployment and into the pockets of Skybeam's lender. This is especially true where Skybeam, having met the 25 percent accelerated milestone and nearing completion of all of its 10 projects, poses virtually no risk of default that would require a draw on the letters of credit.

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[28] *See, e.g., Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7706 & 7767-68, ¶¶ 1 & 123 (2018) (revising the pole attachment rules to ensure that "an incumbent LEC will receive comparable pole attachment rates, terms, and conditions as a similarly-situated telecommunications carrier or a cable television system" with the objective of "promot[ing] broadband deployment by speeding the process and reducing the costs of attaching new facilities to utility poles").

Unfortunately, it is too late for Skybeam to recover the bank fees it has paid over the last four years – funds that could have been used to reduce its overall credit requirements and increase funds available for deployment. But by expeditiously granting Skybeam a waiver to allow it to reduce the value of its letters of credit to a single year, Skybeam can extract some meaningful benefit that it can use to free up capital for deploying broadband to rural Americans.

In sum, the Commission has indicated that the letter of credit rules that currently apply to the CAF II program "impose a disproportionate financial burden on support recipients and result in less funding going directly to broadband deployment."[29] This is even more true with respect to the very similar requirements that apply to Skybeam, which has maintained its letters of credit for almost five years and presents virtually no risk of default. Given these facts, there is ample justification for grant of a waiver to allow Skybeam to reduce the value of its letters of credit to one year. The Commission should do so expeditiously.

Conclusion

Given the compelling evidence discussed above, Skybeam clearly meets the standards of Section 1.3 and thus should be authorized to reduce its letters of credit to a value equal to one year of support. By granting the waiver, the Commission would enable Skybeam to use more of its RBE support for buildout to rural Americans – a result that is undoubtedly in the public interest – instead of the current circumstances where 88 percent of those funds are diverted for bank fees to cover the letters of credit. Every day that the *status quo* is maintained will mean

[29] *RDOF Order* at 46, ¶105.

more RBE money going to a bank than to the 10 rural communities Skybeam has committed to serve. Skybeam therefore respectfully requests expeditious grant.

Respectfully submitted,

SKYBEAM, LLC

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March 17, 2020

Declaration of Jeff Kohler

My name is Jeff Kohler, and I am the Co-Founder and Chief Development Officer of JAB Wireless, Inc. dba Rise Broadband. I am making this Declaration in connection with the foregoing Request for Expedited Waiver of Skybeam, LLC. I hereby declare under penalty of perjury the statements of fact set forth in the Petition are true and accurate to the best of my knowledge.

By: ______________________
Jeff Kohler

Date 3-17-20